

WASHINGTON STATE GAMBLING COMMISSION

COMMISSION MEETING THURSDAY, SEPTEMBER 9, 1999 MINUTES

Chairperson Ludwig called the meeting to order at 1:35 p.m., at Cavanaugh's at Yakima Center. Chair Ludwig introduced the members of the Commission and staff present.

MEMBERS PRESENT: CURTIS LUDWIG, Chairperson;
MARSHALL FORREST, Vice Chairperson;
LIZ McLAUGHLIN, and
Ex Officio Members SENATOR MARGARITA PRENTICE, and
SENATOR SHIRLEY WINSLEY

OTHERS PRESENT: BEN BISHOP, Executive Director;
SHERRI WINSLOW, Deputy Director of Operations;
ED FLEISHER, Deputy Director of Policy & Governmental Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
ROBERT BERG, Assistant Director, Special Operations;
AMY PATJENS, Manager, Communications and Legal Department;
TERRY WESTHOFF, Program Manager;
JONATHAN McCOY, Assistant Attorney General, and
SHIRLEY CORBETT, Executive Assistant

Chair Ludwig noted there is still one vacancy on the Commission, and advised that Commissioner Herbold's absence was excused. Chair Ludwig indicated a change in today's agenda; Item #4 would be discussed after Item #5.

1. LICENSE APPROVALS

New Licenses, Changes, and Tribal Certifications:

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve the new licenses, changes, and tribal certifications as listed in the agenda packet. *Vote Taken; motion carried with three aye votes.*

2. REVIEW OF FRIDAY'S AGENDA

Amy Patjens, Manager, Communications and Legal Department, reviewed Friday's agenda and noted two staff reports were added. Ms. Cass-Healy will be highlighting progress with the Phase II reviews, and Director Bishop will discuss the budget and a possible fee increase that would become effective the first part of next year. Ms. Patjens also advised there are two sets of rules up for discussion only; the rules package on promotional contests of chance, and a housekeeping change relating to age limits for gambling.

3. GROUP IV - QUALIFICATION REVIEWS:

Big Brothers & Sisters of Whatcom County, Bellingham:

Terry Westhoff, Assistant, Licensing Operations, highlighted the qualification review for the fiscal year ending December 31, 1998. It was noted this organization is a charitable organization that provides programs matching volunteer adults to children in need of positive influence, and provides support services to children, parents, and their respective big brothers or big sisters. Mr. Westhoff noted the organization served 340 clients in 1998, and affirmed they met their net return requirement for their Class H Bingo license. There are no pending administrative charges as of this date. The organization has made significant progress toward their stated purpose. Based upon the review, staff recommends Big Brothers/Big Sisters of Whatcom County be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington.

Chair Ludwig expressed his appreciation for the breakout of the portion of Mr. Taylor's time and salary devoted to gambling activities. Chair Ludwig noted the organization cut their previous deficiency by more than half, and asked if continued improvement is anticipated. Mr. Westhoff advised the organization was continuing to work toward efficiency and improvement. **Commissioner McLaughlin** noted the Bingo net income was quite a bit more in '98 than in '97. Mr. Westhoff identified two basic impacts; the first being the closing of a Class III facility in their area, and secondly, operating a more effective management.

Commissioner Forrest made a motion seconded by **Commissioner McLaughlin** to approve Big Brothers/Big Sisters of Whatcom County located in Bellingham as a charitable organization, and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion carried with three aye votes.*

YWCA of Yakima, Union Gap:

Mr. Westhoff addressed the qualification review for fiscal year ending December 31, 1998. This organization was formed as a charitable organization to provide family and personal services such as family crisis programs, volunteer attorney services, youth and wellness programs, and community awareness and education. The organization did not meet its net return for its Class J Bingo license during the period reviewed. However, they have applied and have been approved for participation in the net return moratorium. They are meeting their current net return for this year. There are no pending administrative charges against the organization as of this date, and they have made significant progress toward their stated purpose. Mr. Westhoff noted that based on the review, staff recommends approval of this charitable organization to conduct gambling activities in the state of Washington.

Commissioner McLaughlin questioned the downturn in income. **Ms. Katherine Cox** explained that in May of 1998, the Legends Casino opened just 18 miles south of their establishment. She noted the average spent on their Bingo game has increased to about \$2.60 per person. Ms. Cox noted revenues for the first six months of 1999 has improved. The establishment is seeing more consistency and attendance is rebuilding.

Commissioner Forrest made a motion seconded by **Commissioner McLaughlin** to approve the YWCA of Yakima located in Union Gap, as a charitable organization and be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion carried with three aye votes.*

5. PHASE II REVIEW: (Taken out of agenda sequence order)**Wizard's Casino, Burien**

Cally Cass-Healy noted this organization is a restaurant, bar, and cardroom owned by Wizard's Restaurant LLC. The manager, Gary Murray, holds a 32.08 percent ownership interest. Other interests include: New Highline Lanes Incorporated (Paul and Valerie Johns each own 50 percent and they hold 32 percent of Wizards), K & C Asset Management Inc. holds a 16 percent ownership interest in Wizards, R & R Asset Management holds 16.67 percent interest, and Dana Stromberg holds 2.5 percent ownership interest in Wizards. None of these owners have ownership interests in other house-banked facilities.

Ms. Cass-Healy reported that the licensee received their cardroom and punch board pull tab licenses on November 10, 1998. They began conducting house-banked games on February 19, 1999. The licensee is currently operating 15 tables consisting of six Blackjack, two Progressive Blackjack, two Let It Ride, two Caribbean Stud, two Pai Gow Poker and one Spanish 21 table. Staff conducted a thorough investigation entailing observations of the gaming operations, reviews of the closed-circuit television systems, review of the cashier's cage, review of gaming and organizational records, review of the count-room controls and the key controls, and law enforcement and taxing authority inquiries. An exit conference was conducted and the licensee was cooperative and corrected all violations. Based on the review, staff recommends the decision to approve implementation to Level II, Phase II status for Wizard's Casino.

Gary Murray, Manager, acknowledged the review went well and that staff was helpful in explaining the Phase II review. **Chair Ludwig** commented that the reviews seem to be improving over time and noted this review only listed two violations that were corrected. **Ms. Cass-Healy** affirmed this was the smoothest review conducted to date.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve implementation to Level II, Phase II status for Wizard's Casino. *Vote taken; motion carried with three aye votes.* **Chair Ludwig** apologized for not calling for public comments prior to the vote and said that he would take comments. No additional comments were offered.

It was determined that the attorney for Ms. Chaudry (Ruby's) was not present. Therefore, Chair Ludwig advanced to Agenda Item #6.

6. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:

Senator Prentice announced that the legislative roundtable on problem gambling would be conducted in Yakima on October 19th. Representative Jim Clements, Representative Barb Lisk, and other local legislators will be participating. Senator Prentice encouraged attendance and noted this would be an excellent opportunity to give public testimony before a group of legislators that are very interested and willing to listen gaming concerns.

No other public comments were offered. **Chair Ludwig** consulted with the other commissioners and informed the audience that a brief Executive Session would be conducted while the Commission waited for Ms. Chaudry's attorney to arrive. Chair Ludwig called for the Executive Session at 2:10 p.m. and reconvened the open public meeting at 2:45 p.m.

4. REVIEW OF INTENT TO REMOVE CARD ROOM FROM THE HOUSE-BANKED PILOT PROGRAM:

Ruby's Casino, Kent (Taken out of agenda sequence order)

Chair Ludwig explained to Attorney Miller that the Commission was accustomed to hearing appeals of a Director's decision regarding suspensions, revocation, and matters of that nature which have been through the administrative hearing process and when an administrative law judge's findings and conclusions have been rendered. In this case, there hasn't been an administrative proceeding. In that regard, Chair Ludwig asked Attorney Miller if he had any dispute as to the facts alleged in the Notice of Intent. **Attorney John Miller** replied in the negative. He advised they could "pretty much" stipulate to those facts. Mr. Miller clarified that he is present representing Aztec Development owned by the Chaudry family. He acknowledged that he had talked to Mr. Duffy, the previous owner, whose name is mentioned prominently in these charges, regarding a potential ownership spat between Ms. Chaudry, Mr. Duffy and his former partners. He explained his contention is that the Chaudry's are now the current owners of Aztec Development. Aztec Development Incorporated, with the current owners, have no dispute as to the facts.

Commissioner Forrest asked Ms. Patjens if there was anything in the historic account that was contained in the affidavit that staff would like to dispute. **Ms. Patjens** responded that several of the items in the affidavit are things that the agency would not have any particular knowledge of. For example, the items in Paragraph #3 about the shareholder derivative action, the agency doesn't know if they went to counsel with that. The agency does not have any information about the items that are in Paragraph #4. The agency would agree and be able to stipulate to Item #5. Ms. Patjens affirmed the agency was notified in the middle of July by Mr. Quinlan about the proposed stock purchase. The agency could stipulate to Item #6. An application for a stock transfer was received by the agency and is being processed. Regarding Item #7, the only addition would be items that have already been stipulated to in the Commission's Notice; that the agency actually became aware of the funds missing on July 6th because of an anonymous complaint. Ms. Patjens advised that staff does not know how Ms. Chaudry became aware of the situation. The agency agrees with Item #8, which states that neither Mr. Duffy nor Mr. Wagner had been involved in management decisions. On July 19th the agency issued a waiver to a gentlemen, to be the casino manager (to ensure that he had the six months of experience), because the prior waiver was issued to Mr. Duffy, Mr. Wagner and Mr. Foucheaux, who were no longer with the business.

Mr. Miller asked for a correction on page 3, paragraph #7, "On or about July 6, 1999, Town Bank gave the agent a deposit record and the agent noted the licensee deposited \$30,000 in the PSJ account." Mr. Miller said Ms. Chaudry has been unable to find that record, and doesn't know if it exists. Therefore, they can not stipulate to that fact. **Chair Ludwig** asked if he was referring to the notice. Mr. Miller affirmed. Chair Ludwig noted that with the comments and stipulations, there is no need to take additional testimony other than what has been stated. Mr. Miller affirmed, referring to the facts of the charges. Mr. Miller indicated that if additional testimony is desired, he could supply it by reiterating Mr. Quinlan's affidavit, or by providing supplemental facts regarding current activities since the Chaudry's ownership. Chair Ludwig indicated this may be appropriate since there may be additional questions to counsel.

Chair Ludwig noted that Mr. Duffy and Mr. Wagner were present, and Mr. Miller affirmed. Chair Ludwig expressed his opinion that neither of the gentlemen were a party to this proceeding. That at most, they may be ex-shareholders and may potentially return to that status. However, Chair Ludwig clarified this is not an action against Mr. Duffy, Mr. Wagner, nor Ms. Chaudry. This is an action involving Aztec Development, Inc. **Mr. Miller** concurred. Chair Ludwig advised that he was well aware of what has been recited in the response, and with Mr. Quinlan's affidavit that the proposed purchase agreement (which is in escrow, pending Commission approval of the transfer) is based on \$15,000 cash to Mr. Duffy and Mr. Wagner, once it has been approved.

Chair Ludwig stated this is a hearing or review of the Director's Notice of Intent Remove Ruby's Casino from the pilot program, and asked that Ms. Patjens recite the agency's position. **Commissioner Forrest** said Ms. Patjens could assume the Commission had read the account and the Director's Order so there was no need to repeat the basis of the formal notice of the director's action.

Ms. Patjens noted the Commission had received materials in advance, and emphasized this is an action by the Director for removal of this organization from the pilot program. Ms. Patjens emphasized this is not an action to revoke their pull tab license, nor is it an action to revoke Aztec Corporation's underlying cardroom license. The business does operate five house-banked card tables and one poker table. Ms. Patjens noted this is the first time a case like this has come before the Commission.

Pursuant to contracts participants sign when they enter into the pilot program, they agree: the Director may suspend participation in the pilot program if the licensee has violated the terms of either Appendix B or C; they agree the Director's decision is subject to review at the next Commission meeting; and they agree the Commission's decision is final and not subject to further administrative review. For the record, **Ms. Patjens** reported that the Commission received an anonymous complaint on July 6th that the player-supported jackpot (PSJ) fund only had a few thousand dollars in it when it should have had over \$30,000. The player-supported jackpot is the money that a player decides they want to put into a contest. The house is only the custodian of the funds and may take a 10 percent administrative fee. Upon receiving

the complaint, an agent contacted the bank and confirmed the account was short approximately \$35,000. The bank also noted that when the licensee originally opened their accounts, they did not have overdraft protection on the regular bank account. Darrell Duffy, who was the president of the corporation at the time, asked to have overdraft protection put on the account so that if there was an overdraft on the business account, it would then come out of the player-supported jackpot account. The agency was able to confirm that \$30,000 was put back into the account on July 6th.

Ms. Patjens indicated the licensee will report that the stockholders have changed since these actions occurred. Originally, Ms. Chaudry owned about 35 percent of the stock and the rest of the stock was split between Mr. Duffy and Mr. Wagner. Ms. Chaudry is in the process of purchasing the full stock. The licensee will likely argue they should not be held accountable, that the agency should consider the actions of Mr. Duffy separately and not attribute them to the entire corporation. Ms. Patjens stressed the difficulty of accepting this type of argument is that anytime a shareholder violated the Commission's rules, the other shareholders would argue it wouldn't be fair to hold them accountable for the action they didn't know about. Accepting this type of argument would make it very difficult for agencies to take administrative action against a corporation. Ms. Patjens indicated the licensee will also allege that there was no actual harm because no one won the player-supported jackpot during the time frame in question. While that is true, the Director's role and the Commission's role is to protect the public. Had the jackpot been won, the account would not have had the appropriate funds.

Ms. Patjens pointed to several disagreements she had with counsel's memorandum. There is a question of how the licensee became aware of the missing funds. When agents discovered the shortage, they contacted Ms. Chaudry to schedule a meeting. At that meeting Ms. Chaudry let the agency know they were aware funds had been taken. However, it is not as clear that they contacted the agency and told the agency about the missing funds. Counsel's memo alleges that Ms. Chaudry never had a direct role in the management of the daily activities nor did any other family member. However, her son was involved in the business as early as February of 1999. Ms. Patjens noted the agency realized that removal from the program is a very serious situation for the corporation, but this is also an extremely serious violation. The house-banked program is a special program and the agency has to rely on the cardroom owners to follow the appendices. In this case, they did not. It was intended by virtue of the contract that if the appendices were not followed, someone could be removed from the program. The corporation was using other player's money to fund, in effect, their business. Ms. Patjens stated this is an extremely serious violation of the appendix, and due to the serious nature of this violation, the Director's removal should be upheld.

Commissioner McLaughlin asked if the Commission had any other options besides either upholding or not upholding the Director's decision. **Ms. Patjens** noted the Director did not have an option, however, she believed the Commission had the discretion and flexibility to do what they feel is appropriate.

Jonathan McCoy, Assistant Attorney General, affirmed this is a fairly unique circumstance and affirmed the Commission has the authority to modify the contract, and that there is no limitation on the action they may elect to take. The maximum penalty would be removal from the program. **Commissioner Forrest** affirmed removal is a possibility and noted that although there have been other instances of violations with other entities, they were not removed from the program. Commissioner Forrest noted this case was different, the nature of this violation is serious enough to warrant removal from the program. **Chair Ludwig** inquired if there were other options. **Mr. Miller** expressed his belief this hearing was premature – that he and his client should have had twenty-days to respond. Mr. Miller believed the Commission had other options, and that this shouldn't be an all or nothing situation.

Discussion was initiated pertaining to the management and business skills of the previous and current owners, the sale, the anonymous complaint, and when and who withdrew and replenished the PSJ account. **Mr. Miller** affirmed there were a lot of unanswered questions with regard to the electronic transfer of funds and noted his client has been unable to verify the transaction activities with the bank. Ms. Patjens affirmed the bank could be contacted to provide certification of the transfer activity. Mr. Miller responded that he and his client have talked to the bank and noted they are not sure the money is

in the right account. For the record, it was determined that per Exhibit #37, the PSJ account number is #127002715. Mr. Miller again stated the hearing was premature.

Commissioner Forrest commented that at this point, no one has had a chance to get the full bank records. He recommended the agency and Mr. Miller contact the bank and obtain an agreed upon statement of facts. **Mr. McCoy** noted the activity is not relevant, the substance of the charge is that the PSJ account was invaded, and that activity is a violation of the program rules. Commissioner Marshall responded that the concern of the Commission is the protection of the public, and the public concern would be the availability of the funds. That fact would have a bearing on the penalty. Commissioner Forrest expressed his opinion that a cured violation is vastly different than an uncured violation. Commissioner Forrest suggested the hearing be continued until the October meeting. In the meantime, an agreed upon financial history statement with specific dates could be obtained from the bank. **Director Bishop** affirmed the hearing could be continued, however, he requested assurance that the account would not be further compromised.

Chair Ludwig with concurrence of the Commission closed the hearing on the Notice of Intent to Remove Ruby's Casinos from the Pilot Program, and rescheduled its continuance for the October Commission meeting. A condition was attached that if at any time during the interim, the PSJ account for Aztec Development, Inc. became delinquent, such action would justify their immediate suspension from the program. Chair Ludwig requested information regarding the basis for granting the initial and subsequent waivers, especially if the business did not have or currently does not have six months of cardroom management. **Mr. Miller** thanked the Commission.

7. **ADJOURNMENT**

Chair Ludwig inquired if anyone wished to testify on any other matter. There were no further comments offered. Chair Ludwig recessed the meeting at 3:45 p.m., to be reconvened on Friday, September 10, 1999, at 9:30 a.m.

WASHINGTON STATE GAMBLING COMMISSION

**COMMISSION MEETING
FRIDAY, SEPTEMBER 10, 1999
MINUTES**

Chairperson Ludwig called the meeting to order at 9:30 a.m., at Cavanaugh's at Yakima Center.

MEMBERS PRESENT: **CURTIS LUDWIG, Chairperson;**
MARSHALL FORREST, Vice Chairperson;
LIZ McLAUGHLIN, and
Ex Officio Members SENATOR MARGARITA PRENTICE,
SENATOR SHIRLEY WINSLEY, and

OTHERS PRESENT: **BEN BISHOP, Executive Director;**
SHERRI WINSLOW, Deputy Director of Operations;
ED FLEISHER, Deputy Director of Policy & Governmental Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
ROBERT BERG, Assistant Director, Special Operations;
AMY PATJENS, Manager, Communications and Legal Department;
TERRY WESTHOFF, Special Agent
JONATHAN McCOY, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant

1. **APPROVAL OF THE MINUTES – August 12 & 13, 1999, MEETINGS:**
Commissioner McLaughlin made motion seconded by **Commissioner Forrest** to approve the minutes of the August 12 & 13, 1999, meeting minutes as presented. *Vote taken; motion carried with three aye votes.*

2. **STAFF REPORTS**
Phase II Review Update:
Ms. Cass-Healy reported that staff has realigned their workload to increase the number of Phase II reviews performed. Two teams of agents were established to perform the Phase II reviews over the next several months. Their goal is to expedite the reviews to the best of their ability. It is projected that staff will have contacted all the eligible parties by March of 2000. Staff has asked the eligible licensees to be prepared when they are contacted. They have been notified that they should take all the necessary steps to ensure they are complying with Appendix C. If it is determined that staff cannot perform the review on a timely basis because the licensee is not ready or concerns are noted, staff will move to the next organization in order to keep reviews moving forward. Staff have notified several of the licensees currently eligible for the Phase II reviews. Of nine contacted, five are estimated to come forward for the October meeting. Two have declined to go forward at this time, and two are on hold. Ms. Cass-Healy noted that the director will temporarily approve licensees to operate one-third of their tables at Phase II limits after the completion of their review and prior to formal approval at the next Commission meeting.

Chair Ludwig noted that staff planned and budgeted on an approximate 80-hour time frame to do a Phase II review. **Ms. Cass-Healy** affirmed. Chair Ludwig asked how long current reviews were taking. Ms. Cass-Healy indicated the last review was approximately 80 hours, and noted that on an average, reviews are taking a little over 100 hours. **Director Bishop** recalled that staff originally budgeted these types of reviews at approximately 200 hours. **Ms. Winslow** confirmed the first Phase II reviews originally took approximately 200 hours. Ms. Cass-Healy noted that by forming the two teams for the Phase II reviews, staff would become even more efficient.

Chair Ludwig asked if there was anyone who would like to speak to any problems with the Phase II reviews, the way they are being handled, and whether or not everything was satisfactory. **Mr. Vito Chiechi** thanked Director Bishop, agency staff and the Commission for their fine work and dedication to this program.

Budget:

Director Bishop reported that last June the agency budget was approved with a supplemental budget that included an increase of approximately \$4 million. The budget and the supplemental budget included annual fee increases at the 601 levels for each year. He recalled his promise at the time the budget was presented that staff would review increases very carefully before implementation. In fact, fee increases were not implemented last year. Director Bishop stated that a preliminary analysis of the budget indicated a need for fee increases. Staff will be evaluating the budget and if an increase in fees is proposed, Director Bishop assured the Commission staff would simply be proposing implementing the budget as previously proposed and approved. Fee increases would be within the 601 levels, which would be a 3.32 percent increase. The effective date would most likely occur between March and June of 2000.

Commissioner McLaughlin asked if this was strictly the operating budget or if it included the move to the new building. **Director Bishop** replied that the move was a part of the supplemental budget. **Commissioner Forrest** asked if Director Bishop anticipated a leveling off of costs after the completion of test period and the approval of licensees in the program. He indicated that the amount of time needed to maintain a program should be less than the time needed for approving licensees in a start-up program. Director Bishop affirmed and reiterated that staff would be closely reviewing budget and manpower needs.

Commissioner Forrest inquired about the agency's salary increase policy and automatic cost of living raises. He asked if there was a state policy that guided agency policies. **Director Bishop** responded that the agency has flexibility with some of the employees. He noted that a lot of the agency's employees are exempt, and some of the managers are included in the WMS, which provides the agency with more flexibility. Director Bishop affirmed the budget includes incremental step increases as authorized by the merit system. These are normally five percent annually up to a specific limit. He noted the budget included the three percent cost of living increase for 1999, that went into effect the first of July. An additional three percent COLA provision will take effect in July of next year. These increases were not a part of the budget the Commission approved last summer, and were added as a result of legislative action this year. Commissioner Forrest requested that he be provided with a brief explanation of the various policies that govern the cost of living and step or merit salary increases when the budget is submitted.

Commissioner McLaughlin explained that it was her understanding that I-601 covered general funds for local and state government. She inquired whether the Gambling Commission fell under this mandate since the agency didn't have general funds. **Director Bishop** responded that the Attorney General's Office has affirmed this applied to all of state government. Commissioner McLaughlin asked if I-695 would affect the agency. Director Bishop was unsure. Commissioner McLaughlin inquired if there was language in 601 that prohibited raising taxes or fees without going to a vote of the people. **Senator Prentice** expressed a like concern and asked staff to scrutinize this issue very carefully and respond at the next meeting. Senator Prentice was concerned if budget constraints affected staff increases and

training needs during the pilot program. Senator Prentice specifically addressed I-601, noting that many questions have remained unanswered. She was aware of at least one agency that didn't feel they were covered by I-601 and therefore asked the Commission to do the necessary research. **Mr. Fleisher** clarified that any expenditure-type item does not apply to agency fees. However, I-601 states that no fee can be increased by an amount greater than the fiscal growth factor, (which has been running around three percent the last couple of years) without specific authorization by the Legislature. Mr. Fleisher affirmed that is the part of 601 that the agency has to comply with.

Director Bishop reported that the Commission and staff had the opportunity visit the Yakima Greenway Foundation and tour their park and facilities. He said he was very impressed with their operation and expressed his appreciation for the invitation.

2. **RULES FOR DISCUSSION:**

Promotional Contests of Chance

Ms. Amy Patjens, Manager, Communications and Legal Department addressed WAC 230-46-020, WAC 230-46-035, WAC 230-46-045 and WAC 230-20-192.

Ms. Patjens reported the rules apply to no fee Bingo and promotional contests of chance. She noted the history of promotional contests of chance and no fee Bingo had been reviewed over the past few meetings. Court case information that dealt with promotional contests of chance prior to the promotional contests of chance law being passed and put under the Gambling Act were provided in the agenda packet. Letters supporting businesses being allowed to continue to operate no fee Bingo were also provided. Ms. Patjens explained that because these activities were placed under the Gambling Act, staff receives questions from businesses wanting to know what activities are allowable. Ms. Patjens reported that the rules package would more specifically allow some promotionals, but the interpretation would not be as broad as in the past. In 1993, the agency reviewed the statute and felt there wouldn't be any public harm if a broader interpretation of the statute was utilized. Essentially, the interpretation was that it was okay if there was a free method of entry for entry into a promotional contest of chance, even if someone was required to purchase something as another method of entry.

Ms. Patjens explained that Item 2A is a definition section and Item 2B is a new section dealing with different interpretations and restrictions on promotionals. One of the things they have interpreted is what it means to visit a business or establishment, and what it means to obtain or deposit a coupon or entry blank. Staff's interpretation would be that it is okay if one is required to do some type of an activity, (spin a wheel, or to put a mark on a Bingo card) to see if one has won a prize, as long as there is no purchase required. Ms. Patjens noted that Subsection 4 deals with the contests where one is automatically entered every time one purchases goods or services. Staff would not interpret this as being required to make a purchase as long as under the rules of the contest, there was a free method of entry. She noted some businesses automatically enter customers into some type of contest each time they use their credit card, and that would be allowable as long as there was a way for someone else who doesn't necessarily have that credit card to be entered as well.

Ms. Patjens said Subsection 5 deals with an interpretation of the part of the law that talks about expending time, thought, attention and energy in perusing promotional materials. An example would be attending a timeshare presentation and winning a prize if the individual looked at their materials. This is allowable as long as one is not required to be in attendance for more than 30 minutes. This is a change from the current rule of allowing up to two hours. The change is an effort to make the time that one could spend playing a no fee Bingo game (which is also perusing promotional material) the same as it is for the timeshare situation. Ms. Patjens noted there have been some alternative suggestions on changing the time period for no fee Bingo, which will be reviewed to make it consistent.

Item 2C sets forth how no fee Bingo would have to be played. It would be very similar to the conditions that currently exist. Staff has provided guidelines for this activity when requested, and the agency's desire is to get out of the approval letter business. Instead of letters, the information would be set forth

in one rule. Ms. Patjens noted the Washington State Licensed Beverage Association (WSLBA) submitted correspondence indicating their desire to have the time extended from one-half hour to one hour per day, and then to have this activity done one day a week. The way the rules are drafted, a business would be able to do no fee Bingo seven days a week, so the request from the WSLBA would be more restrictive. The WSLBA would also like to have the days and hours of operation posted. Ms. Patjens also referred to a letter submitted by Steve DeCou proposing the time limit be set at five hours. Mr. DeCou believed that by the time a licensee got their game set up, a half an hour play would not be sufficient. He proposed businesses be allowed to operate this activity three times per week and that there be a prize limit of \$100 per week and no more than \$5,000 per year. Ms. Patjens affirmed that staff has not had a chance to discuss this and explained that she was not sure that the agency wanted to get into regulating these games to that extent. A staff recommendation will be provided at the next Commission meeting.

Item 2D addresses the standards for disposable Bingo cards and would allow manufacturers to provide Bingo cards to these businesses. Ms. Patjens affirmed the rules are up for discussion and will be up for final action next month. She noted the Commission did not have to act on the alternative suggestions today.

Commissioner Forrest commented that the Commission should take a very conservative view of what the statute authorizes, and if any affected industry felt that they need more authorization, they should ask the legislature -- and let the legislature lay down the ground rules. Commissioner Forrest supported a very conservative and restrictive interpretation and implementation of the statute. The basic idea is that only those forms of gambling that are authorized are permitted. Commissioner Forrest explained that ideally he would like to see the legislature say this is not the Commission's responsibility.

Commissioner McLaughlin commented that she liked the change in the manner in which the rule was prepared by using bold for the changes -- it made it easy to understand. **Chair Ludwig** opened the meeting for public comment.

Mr. John Beadle, Seattle Junior Hockey Association, spoke for the Washington Charitable and Civic Gaming Association. He noted this subject has been discussed with their association for the last three months. The Association desires an approach as fair as possible. They do favor some kind of regulation as long as it is minimal. Mr. Beadle affirmed the Association voted to go on record as supporting A as written, B and C as the alternative submitted by Vito Chiechi, and D as written.

Mr. Steve DeCou reported that he had looked at the 41 licensees who requested no fee Bingo over the past two years and analyzed the number of hours they requested, and the numbers of days they had requested. He distributed a chart detailing the information. He noted that he operates Beaver Bingo from six to ten every Tuesday. He provided a display sample of prizes purchased for no more than a dollar each. He explained his event is like a Bingo session, but that the people come to his place for the prizes. People that go to Bingo halls are given money prizes and are not interested in what he is offering. Mr. DeCou offered suggestions to alleviate some problems. He suggested that the Bingo card be provided immediately prior to a Bingo game -- this prevents people from having to wait for an hour before they can play a game of Bingo. He suggested the maximum time be four hours, twice a week, and a limitation of \$100 worth of prizes be established per week. As a bookkeeping measure, he suggested that the winner's name and prizes be recorded for each game on a regular notepad kept with the Bingo equipment. That way, if the Gambling Commission believed someone was overstepping the no fee Bingo rules, they could review the books for compliance. Mr. DeCou noted this activity was a great social event and doubled his business the last Tuesday he conducted the event. He hoped the rules were amended so that the people in Beaver could enjoy their Tuesday night out.

Chair Ludwig commented that Mr. DeCou's letter requested five hours per session and three times a week, however, he noted that Mr. DeCou only operated one day a week. **Mr. DeCou** affirmed and noted that he believed his request is the same as the original letter of request to the Gambling Commission.

Chair Ludwig commented that what Mr. DeCou does in his location is adequate, but may not be

adequate for others in different locations. **Commissioner McLaughlin** commented that this is considerably more liberal than what the WSLBA offered. **Mr. DeCou** believed the WSLBA is concerned that a three or four hour session by a licensee such as himself may affect the charitable Bingo operation. He noted that there isn't that type of operation near his location. He believed there is no correlation between a Bingo player that is playing for money and the Beaver or Bacon Bingo player.

Ms. Julie Porter, WGC, noted her organization supports barstool bingo. She provided an overview of promotional law from her point of view regarding the proposed rule changes to WAC 230-40-035 and her organization's view of what they were trying to accomplish.

She explained that in 1996, her company put together a promotional contest for their clients with the WSGC's approval. The program worked well because it gave their clients and their customers added value. Two years ago, their company began working with the WSGC to put together another promotion and this time it involved a machine. Ultimately, approval was denied. Ms. Porter said that in the light of current promotional market, the statutes are too restrictive which leaves staff with three choices: 1) Do they enforce the statutes and stop most promotional activity? 2) Do they for the most part tolerate what is going on unless it crosses into being a scheme in itself? or 3) Rewrite the rules.

Ms. Porter believed that in the staff's desire to eliminate minor annoyances, they've rewritten the rules and the statute. She referred to RCW 9.46.0355 which authorizes promotional contests of chance and sets out legal means of entry. She believed the statutes are addressing sweepstakes. All the means of entry described are for sweepstakes and drawings; however, the public has a preference for instance-win promotions. The instant-win promotions use a game card, printed with randomly-generated numbers to establish a pre-determined winner. Promotional game cards are not authorized in the statutes nor are instant-win cards because this is a new form of promotion. Ms. Porter believed the proposed rules are far afield of the statutes.

Ms. Porter noted that there is a promotional law manual by the Promotional Marketing Association. This manual summarizes state and federal law. It states that in some instances in Washington, federal law supercedes state law. In some instances, Washington statutes are different than the federal laws and she suggested that the state statutes need to be rewritten to conform to federal law.

She addressed WAC 230-46-035, identifying gambling devices or supplies that should not be used to conduct promotional contests of chance. She stated that just because the device is electronic, it does not make it a gambling device. Ms. Porter reiterated that her company does not believe promotional machines are gambling devices. She clarified that a gambling device has to have three things: prize, chance, and valuable consideration. If those three considerations don't apply, it is not a gambling device -- just as promotions are not gambling.

Ms. Porter noted that when the statutes were written in the '70s, an electronic device would have been way outside of acceptable limits, but Washington State has changed and so has the world of technology. She displayed a promotional game card saying it cost three cents, and an electronic ticket which costs one-third of a cent. She believed economics is driving this debate, particularly for the small operator. She addressed an example of an electronic gaming device that is used throughout the United States in conformance with federal law and referred to a letter noting this has been approved by states that don't have gambling. They regard this activity as a straight promotion.

Ms. Porter addressed WAC 230-46-020 -- Definitions -- "Promotional contests of chance means a scheme designed to promote a specific business, product or service other than gambling activities." She said she realized that it seemed easy to exclude gambling. She said she didn't think anyone was willing to stand up and say they are in favor of promoting gambling. However, beyond all the things that currently promote gambling (lottery promotions, jackpots, happy hour pull tab games), the reality is that other than legalizing lotto, the single biggest step to promote gambling in the state of Washington happened when electronic gambling devices were authorized. Now there is a continuous promotion of slot machines promoting Vegas-style gambling. Ms. Porter emphasized that whatever danger is feared

from the promotion of gambling, it already exists and she believed it would be hypocrisy to tell the state's small operators they won't be allowed to fight for their survival. Ms. Porter stated that her company intends to promote legislation on these issues and welcomes input. She said that the law should be specific enough, clear enough and understandable enough so that the Commission didn't have to become involved with promotions. Ms. Porter noted that WSGC staff had worked with industry to solve regulatory issues and she believed they should work together again on legislative issues. Ms. Porter said her company is putting together a written statement on their position of the issues and what they would like to see happen. They believe this belongs in the hands of the legislature, and would like to see the Commission delay their vote until they can get together with legislature. Ms. Porter was confident that good legislation could be passed addressing all the pertinent issues.

Commissioner McLaughlin stated for the record that the Ninth Circuit Court told the Commission they had to define an electronic gaming device for a government, not for an individual person or an individual business. This applied to the governments of all the various Indian tribes. Commissioner McLaughlin noted that it would take legislative action to give these machines to the citizens of Washington State.

Chair Ludwig asked if anyone else cared to speak on this particular rule. He informed the audience this would not be the last opportunity, the rule would be on the agenda next month for final action. He noted there was a lot of support for the rule and a lot of alternative suggestions that need to be carefully reviewed between now and next month.

Ms. Patjens noted that WAC 230-46-034 regarding gambling devices was addressed in the study group session. Some word smithing changes were made, but nothing substantive. This will also appear on next month's agenda.

3. AGE LIMIT TO PARTICIPATE IN GAMBLING ACTIVITIES:

Ms. Patjens addressed WAC 230-12-027, WAC 230-12-030 and WAC 230-20-210, noting all are up for discussion. They were filed after the last Commission meeting and they deal with two topics; age limits for gambling and liquor as prizes. Ms. Patjens explained these are housekeeping changes simply so that the rules would be easier to find. The age limit for gambling is generally age 18 with a couple of exceptions. Bingo can be played under the current rules if a player under age 18 is accompanied by a guardian or a family member who is at least 18 years of age.

Item 3B clarifies when a business can offer alcohol as a prize. Usually a business cannot do this because of restrictions by the Liquor Control Board. Subsection 2 has some exceptions, for example, if an organization is having a members-only raffle and it's an unlicensed raffle, liquor can be given away as a prize as long as the organization has the proper permit from the Liquor Control Board. Ms. Patjens affirmed that our agency worked with the Liquor Control Board on these rules. Item #3C would be repealed because the pertinent information would appear in the first rule, Item 3A.

The format was discussed at the last Commission meeting and two versions were suggested – the question and answer format, and a more traditional format using a bold heading format, both with the intent of trying to make things easier to find. Ms. Patjens affirmed the rules are up for further discussion.

Chair Ludwig opened the meeting for public comment and noted this was not the final opportunity for discussion, final action will take place next month. He asked if anyone had any concerns. He believed the consolidated format made the rules very clear, particularly in the age area. There were no public comments -- the public hearing was closed.

4. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:

Director Bishop reported that the agency, and in particular, our Communications Coordinator, Cindy Reed, was selected to receive the 1999 Videographer Award of Excellence for the newly produced video, "The Case of the Misplaced Trust." The award is a national awards program created by communications

professionals to honor talented individuals and companies in the video production field. The Commission's video was selected out of a field of 2,333 national and international entries. Judges select only the submissions they deem are produced, shot, and edited in an exceptional manner. He noted that Ms. Reed has been actively involved in the agency's licensee training program for many years and has produced four or five videos that have been produced for various training purposes. This particular video has to do with illegal gambling activities and is provided to all the licensees to make them aware of the things that could potentially put their license at risk if condoned. Director Bishop stated this is a tremendous achievement for the agency, that the agency is very honored to have the award, and personally recognized Cindy Reed. **Chair Ludwig** said it was unfortunate Ms. Reed wasn't in attendance today and expressed the Commission's gratitude and appreciation for the fine work she's done.

Mr. Beadle addressed the Commission and voiced his appreciation for support he received from Director Bishop. He stated that approximately two years ago, he read an article in a newsletter that referred to a social non-profit organization in Massachusetts winning a court case with IRS. The state required the organization to spend 35 percent of their money towards their program purpose. The IRS ruled that as a state requirement, they could write off that expense against their pull tab income, which zeroed out their tax liability under unrelated business income tax. Mr. Beadle offered an example of the amount of money that could mean for a single non profit organization in this state. At that particular time, the number one organization that sold pull tabs paid approximately \$100,000 per year on UBIT.

Mr. Beadle equated this information to a WAC in this state requiring 60 percent to be expended on program services. He wrote a brief and went to a CPA firm who agreed this may be a good court case for Washington as well. He went to his Association and the WCCGA and they concurred with the project. The preparation went on for about two years. However, during this process, he contacted Director Bishop and asked for help. Director Bishop assigned two staff members to assist him, and after about two years they received the IRS decision that every non-profit organization that pays UBIT on pull tabs will no longer be required to do so. This decision affects every non profit organization licensed gambling in the state. Mr. Beadle also noted the organizations may go back three years and get a refund. For his organization the refund came approximated \$550,000 over a period of six years. Mr. Beadle emphasized that Director Bishop and his staff were very instrumental in this decision and he went on record thanking them for their assistance. **Chair Ludwig** acknowledged the expression of appreciation and noted the staff recognition.

5. ADJOURNMENT:

With no further business, a motion for adjournment prevailed at 10:40 a.m.

Minutes submitted to the Commission for approval.

*Shirley A. Corbett,
Executive Assistant*